

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

KIRK HENRY, et al.,)	
)	
Plaintiff(s),)	
)	
vs.)	2:08-CV-635-PMP-GWF
)	
FREDRICK RIZZOLO, et al.)	MINUTES OF THE COURT
)	
Defendant(s).)	DATED: April 2, 2010

PRESENT: THE HONORABLE PHILIP M. PRO, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: Donna Andrews RECORDER: Summer Rivera

COUNSEL FOR PLAINTIFF(S): Peter S. Levitt, AUSA

COUNSEL FOR DEFENDANT(S) : Richard F. Boulware, AFPD

PROCEEDINGS: CRIMINAL CONTEMPT PROCEEDINGS IN RE: JAMES KIMSEY

8:30 a.m. Court convenes.

IT IS ORDERED Defendant's Motion to Dismiss Order to Show Cause and Certification of Facts to District Court [310] is **DENIED**.

Mr. Boulware stipulates to the fact that his client is not an attorney.

On the motion of Mr. Boulware, **IT IS ORDERED** the Rule of Exclusion is invoked.

Mr. Boulware objects to the admission of Government exhibits dealing with his client's previous criminal convictions. The Court hears the arguments of counsel.

The Court sustains Mr. Boulware's objection to the admission of Government Exhibits 3, 4 and 5. The Court will allow the admission of Government Exhibits 2A and 2B.

SPECIAL AGENT CARLOS FELIX, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt and cross examination by Mr. Boulware, then is excused. **Government's Exhibit 1, 2A, 2B and 16 are marked and admitted in evidence.**

2:08-CV-635-PMP-GWF
4/2/2010
Page 2

JACK DEGREE, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt and cross examination by Mr. Boulware, then is excused. **Government's Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 are marked and admitted in evidence.**

DAVID GROOVER, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt and cross examination by Mr. Boulware, then is excused.

KENNETH FRIZZELL, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt and cross examination by Mr. Boulware, then is excused.

10:35 a.m. - 10:50 a.m. Court stands at recess.

FREDERICK JOHN RIZZOLO, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt and cross examination by Mr. Boulware, then is excused.

The Court sustains Mr. Boulware's objection to Government's Exhibit 16 and ORDERS the admission of that exhibit be stricken.

The Government rests.

Mr. Boulware's moves pursuant to Rule 29A for a Judgment of Acquittal. Mr. Levitt argues in opposition.

IT IS ORDERED Defendant's Motion for a Judgement of Acquittal pursuant to Rule 29A is **DENIED**.

On the motion of Mr. Boulware, the Government having no objection, **IT IS ORDERED Defendant's Exhibit 508 is marked and admitted in evidence.**

The Court instructs counsel to return at 3:00 p.m. this afternoon at which time the Court will hear closing arguments.

Mr. Boulware requests a continuance of two or three days to obtain the transcript to prepare for closing arguments.

2:08-CV-635-PMP-GWF

4/2/2010

Page 3

The Court denies Mr. Boulware's request and instructs counsel to return at 3:00 p.m. for any additional closing arguments and the Court's ruling.

The Court denies Mr. Boulware's renewed 29A Motion.

12:10 p.m. Court stands at recess.

3:00 p.m. Court reconvenes. All parties are present.

Closing arguments are presented by Mr. Leavitt on behalf of the Government and Mr. Boulware on behalf of Mr. Kimsey.

The Court places its findings of fact and conclusions of law on the record.

The Court finds the factors set forth in Magistrate Judge Foley's Order to Show Cause why James Kimsey should not be held in criminal contempt have been satisfied beyond a reasonable doubt by the evidence and that James Kimsey is, in fact, responsible for engaging in the unlawful practice of law by a person who is not an attorney, both in violation of the local rules of practice and the applicable Nevada Revised Statute previously cited, and is guilty of contempt of this Court.

IT IS ORDERED the matter is referred to the Probation Department for the preparation of a Presentence Investigation Report. Sentencing is set for 7/2/2010 at 10:00 a.m.

Mr. Boulware will submit a list of Guides to be filed as Defendant's Exhibit 508.

On inquiry by Mr. Levitt, the Court finds Mr. Kimsey will be permitted to file objections to the Presentence Investigation Report.

4:00 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By:

/s/

Donna Andrews, Deputy Clerk